IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CIVIL REVISION NO.1400 OF 1991
DECIDED ON : 05.12.2007.

Dadri Education Society, Charkhi Dadri, through its President Shri Ram Kishan Gupta.

.....Petitioner

Versus

Shri Pyare Lal son of shri Jagan Nath, caste Mahajan, resident of Gandhi Market, Charkhi Dadri.

....Respondent

CORAM: HON'BLE MR.JUSTICE SHAM SUNDER.

Present:- Mr.O.P.Goyal, Sr.Advocate with
Ms.Pawanpreet K.Dhindsa, Advocate
for the petitioner.

None for the respondent.

JUDGMENT:

This revision petition is directed against the judgment dated 10.01.1991 rendered by the Appellate Authority (Additional District Judge), Bhiwani, vide which the appeal was accepted and the order of the Rent Controller dated 06.06.1989 was modified by fixing the fair rent of the demised premises, to the tune of Rs.166/- per month plus house tax, instead of Rs.205/- per month + house tax, fixed by the Rent Controller.

2. The facts, in brief, are that the petitioner/landlord inducted Pyare Lal respondent/tenant in the demised premises, as fully detailed, in the petition, at a monthly rental of Rs.150 + house tax. The ejectment of the respondent/tenant, was sought, on the ground, that he had not paid the arrears of rent, from 01.02.1986 to 31.08.1986 @ Rs.150/- per month and house tax from 01.04.1986 to 31.08.1986 amounting to Rs.73.85. The second prayer made, in the application, was that the fair rent of the shop

be fixed as a new shop in the area in which the same is situated, could fetch rent of Rs.700/- per month + house tax. Accordingly, a combined application under Section 13 and 4 of Haryana Urban (Control of Rent and Eviction) Act, 1973, was filed.

3. The respondent/tenant, put in appearance, and filed written statement, wherein, he admitted the relationship of landlord-tenant, between the parties, as well as fixation of fair rent @ Rs.150/- per month. On the first date of hearing, the arrears of rent + house tax were tendered, as demanded by the landlord/petitioner. It was further stated that a shop, in the area in which the shop in question is situated, could only fetch rent @ Rs.50/- or Rs.60/- per month. It was further stated that the landlord/petitioner was not entitled to the fixation of fair rent. It was further stated that the petition had been filed, just with a view to harass the tenant/respondent.

4. In the replication, filed by the landlord/petitioner, it reiterated all the averments, contained in the petition, and repudiated those, contained in the written statement.

5. On the pleadings of the parties, the following issues, were struck by the Rent controller:-

1. Whether the respondent is liable for eviction from the premises in dispute, as alleged? OPP
2. Whether there are grounds for fixation of fair rent, is so at what rate? OPP
3. Whether the applicant has no locus-standi to file the application? OPR
4. Whether the application is bad for misjoinder of cause of action? OPR
5. Relief.

6. The parties led documentary, as well as oral evidence, in support of their case.

7. After hearing the Counsel for the parties, and, on

going through the record of the case, the Rent Controller fixed fair rent @ Rs.205/- per month plus house tax. The ground of ejectment, on account of non-payment of arrears of rent, was not pressed by the landlord/petitioner.

8. Feeling aggrieved, against the judgment, dated 06.06.1989 of the Rent Controller, an appeal was preferred. The Appellate Authority (Additional District Judge), Bhiwani accepted the appeal, as stated above, and fixed the fair rent at Rs.166/- per month + house tax.

9. Dissatisfied with the judgment dated 10.01.1991 of the Appellate Authority, the instant revision petition, was filed by the landlord/petitioner.

10. Notice of the revision petition, was issued to the respondent , as a result whereof, his counsel put in appearance initially, but at the time of arguments, none appeared on behalf of the respondent.

11. I have heard the Counsel for the appellant/landlord and have gone through the record of the case carefully.

12. The Counsel for the appellant, at the very outset, contended that the Appellate Authority, committed an error, while calculating the fair rent. The formula for fixing the fair rent is depicted in Section 4(2) of the Haryana Urban (Control of Rent and Eviction) Act, 1973. This formula was interpreted and approved in a Division Bench Authority of this Court in **Yoginder Mohan Versus Krishan Lal 2000(1) PLR 788.** The fair rent was fixed in the earlier ejectment application as Rs.150/- P.M. + house tax w.e.f. 01.08.1980. The basic rent in the instant case was, thus, Rs.150/- P.M. + house tax. The whole sale price index, in the year 1980 was Rs.206.3, whereas the whole sale price index, in the year 1985 i.e. one year preceding, the filing of the ejectment

application, was Rs.353.3. The difference between the two figures, came to be Rs.147/-. Percentage of difference between the two figures of price index came to be 71.25% (147x100/206.3) According to Section 4 of the Act ibid, 25% of this difference, was required to be taken as percentage of increase for fixing the fair rent, on the basic rent. This percentage thus came to be 17.81%. On this basis the increase in fair rent came to be Rs.26.72 (round figure Rs.27/-) (150x17.8/100). The fair rent, on the basis of this formula, if calculated, came to be Rs.177/- (Rs.150+ Rs.27/-). This method was depicted, by the Counsel for the revision petitioner, in a separate chart, submitted by him. The calculations depicted in the chart, submitted by the Counsel for the revision petitioner, are consistent with the formula referred to above, and in line with the principle of law, laid down, in **Yoginder Mohan's case (supra)**. The Appellate Authority was wrong in claculating the fair rent of the demised premises, at Rs.166/- P.M. + house tax. It is, therefore, held that the fair rent in respect of the demised premises, is Rs.177/- per month(round figure) + house tax. The contention of the counsel for the revision-petitioner, is correct to this extent. The findings of the Appellate Authority, to this extent, are modified.

13. For the reasons, recorded hereinbefore, the revision petition is partly accepted, with no order as to costs. The judgment dated 10.01.1991 of the Appellate Authority, is modified, and the fair rent of the shop in-question is fixed at Rs.177/- per month(round figure) + house tax, from the date of application, instead of Rs.166/- per month + house tax, fixed by the Appellate Authority.

December 05, 2007 **(Sham Sunder)**
mamta m **Judge**